IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.992/2007

Reserved on.6.11.2007

Decided on.12.11.2007

D.A.V. Senior Secondary School Una. …Petitioner.

Versus

State of H.P. & others. …Respondents

Coram

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting ?[1]*. yes.*

For the petitioner :	**Mr. Ajay Mohan Goel and Mr. Suneet Mohan Goel, Advocate.**
For the respondents	**Mr. M.S. Chandel, Advocate General with Mr. M.A. Khan and Ms. Meenakashi Sharma, Deputy Advocate Generals for the respondents.**

Rajiv Sharma, J.

The brief facts necessary for the adjudication of this petition are that the petitioner-school i.e. D.A.V. Senior Secondary School, Una (hereinafter referred to as the petitioner) came to existence in the year 1911. The strength of the institution is about 3200 students. The Principal of the school sent a communication to respondent No.4 on 19.5.2007 for registration of FIR against the persons mentioned therein. The gist of the complaint was that few teachers of the school, namely, Umesh Sharma, Narinder Sharma, Harish Kumar Shastri, Subhash Arora and Harish Chandan had instigated the students to indulge in vandalism in the school premises resulting in loss to the property. It appears from the record that on the same date i.e. 19th May, 2007 again the request for registration of First Information Report (FIR) against the teachers on whose instance the

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? yes.

property of the school was damaged. No FIR was registered by the Station House Officer (SHO), Una, respondent No.4 on the basis of communication dated 19.5.2007 respectively. When no FIR was registered on the basis of the communication dated 19.5.2007, the representation was made by the Principal of the petitioner-School to Superintendent of Police, Una i.e. respondent No.3, Deputy Commissioner, Una, D.I.G, Northern Zone, Dharamshala as well as to Director General of Police, H.P. on 21.5.2007. The Superintendent of Police, respondent No.3 was specifically informed vide letter dated 22nd May, 2007 that FIR has not been registered by the SHO, Una. When no action was taken by respondents No.3 and 4 on the complaints made by the Principal, fresh letter was sent by the Principal of the school to the Superintendent of Police, Una on 28.5.2007 under the subject "registration of FIR". It appears from the record that another untoward incident had happened in the school premises on 6.6.2007 between the Management and the Teachers which led to the fresh complaint being lodged with respondent No.3 on 8.6.2007. The fact of the matter remains that no FIR was registered despite the complaints/representations made by the Principal of the school on 19.5.2007, 21.5.2007, 22.5.2007, 28.5.2007 and 8.6.2007.

Mr. Ajay Mohan Goel, Advocate had strenuously argued that on the basis of the complaints lodged by the Principal of the petitioner-school, the FIR was required to be registered by respondent No.4. He had further contended that on the bare perusal of the complaints, it appears prima facie that the offences were cognizable in nature and the police was bound to register the FIR and to investigate the matter.

The learned Advocate General had submitted that no cognizable offence was made out on the basis of the mere reading of the complaints

lodged by the Principal of the School and respondent No.4 was within his jurisdiction not to register the FIR accordingly.

I have heard the learned counsel for the parties and perused the record.

Mr. Ajay Mohan Goel, Advocate had taken the Court through the Annexures P-1 to P-5 as well as Annexure RA dated 19.5.2007 to buttress his submission that bare reading of the contents of these documents discloses commission of cognizable offence by the persons mentioned therein. The first incident took place on 19th May, 2007. It is mentioned in the first communication dated 19th May, 2007 that at the instance of Umesh Sharma, Narinder Sharma, Harish Kumar Shastri, Subhash Arora and Harish Chandan, the students of the school indulged in vandalism resulting loss to the property of the school. It is further mentioned in the complaint that the window panes, ventilators, tubes, bulbs, furniture, dustbin, flower pots etc. of the school were damaged. It was stated in the communication that neither the students nor the teachers were willing to restore the academic atmosphere in the school.

The contents of the complaint dated 19th May, 2007 did disclose the commission of cognizable offence and the FIR was required to be registered and the matter was required to be investigated. The version of respondent No.4 as per the reply is that he had received a telephonic message at 2.20 P.M. pursuant to which he visited the school and remained there between 2.30 P.M. to 3.00 P.M. and during this period neither any untoward incident took place nor any adverse report was brought to his notice. The departure of the SHO, respondent No.4, was entered in daily dairy report No.13 dated 19.5.2007. The second DDR as per the reply filed by respondents No.1 to 4 is at Sr. No. 23 dated 19.5.2007. According to the contents of this report No.23 dated

19.5.2007; the impression is being given that there was a dispute between the Management and the Teachers, who were demanding release of 95% grant-in-aid. The daily diary report No.23 was registered after the SHO had visited the spot and came back to the Police Station.

The next DDR No. 15 is dated 20.5.2007. In the concluding portion of the DDR No. 15 dated 20.5.2007, it is mentioned that as per the contents of the complaint there was loss of property but the matter was not cognizable. If the contents of the complaint itself had disclosed the loss to the property, it was a cognizable offence and the FIR was required to be registered against the culprits mentioned in the complaint. Respondent No.3 had admitted in the reply that he had received the various communications from the Principal of the school for the registration of FIR. His further version is that since the matter was looked into by the SHO personally as per the contents of the DDRs No. 13, 23 and 15 dated 19.5.2007 and 20.5.2007 and since no cognizable offence was found to have been committed by the persons mentioned in the complaints, the FIR could not be registered.

The Superintendent of Police, Una has also been specifically apprised about the incident whereby the Principal of the school was gheraoed by Sh. Parmod Kumar, Umesh Kumar and Narender Kumar on 6.6.2007. This act on the part of the teachers mentioned in the communication dated 8.6.2007 also constituted cognizable offences. The Superintendent of police, Una was bound to direct respondent No.4 to register the FIR in this regard.

The Hon'ble Supreme Court in ***Parkash Singh Badal and another versus State of Punjab and others***, (2007) 1 SCC has in detail discussed the legal principles governing the registration of cognizable

offences and the investigation whatsoever thereof. Their Lordships have held as under:

> **” So far as the allegation that political opponent had lodged the complaint is concerned, that itself is not sufficient for the Court to interfere. When the allegation is made, investigation is undertaken to find out whether there is any substance in the allegation. Merely because the political opponent was the complainant that does not per se lead to an inference that the complaint has to be thrown out or that no notice should be taken thereof.**
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> **Before dealing further whether the submissions ought to prevail, the legal principles governing the registration of a cognizable offence and the investigation arising thereon need to be noted. Section 154(1) is the relevant provision regarding the registration of a cognizable offence and that provision reads as follows:**
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> > **"154. Information in cognizable cases.-(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in his behalf".**
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> **The above sub-section corresponds to Section 154 of the Old Code (Act of 1898 to which various amendments were made by Act 26 of 1955 and also to Section 154 of the Code of Criminal Procedure of 1882 (Act 10 of 1882) except for the slight variation in that expression 'local government' had been used in 1882 in the place of 'State Government'. Presently, on the recommendations of the Forty-first Report of the Law Commission, the sub-sections (2) and (3) have been newly added but we are not concerned with those provisions as they are not relevant for the purpose of the disposal of this case except for making some reference at the appropriate places, if**

necessitated. Section 154(1) regulates the manner of recording the first information report relating to the commission of a cognizable offence.

The legal mandate enshrined in Section 154 (1) is that every information relating to the commission of a 'cognizable offence' (as defined under section 2 (c) of the Code) if given orally (in which case it is to be reduced into writing) or in writing to "an officer incharge of a police station" (within the meaning of Section 2(o) of the Code) and signed by the informant should be entered in a book to be kept by such officer in such form as the State Government may prescribe which form is commonly called as "First Information Report" and which act of entering the information in the said form is known as registration of a crime or a case.

At the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence in compliance with the mandate of Section 154 (1) of the Code, the concerned police officer cannot embark upon an enquiry as to whether the information, laid by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not reliable or credible. On the other hand, the officer in charge of a police station is statutorily obliged to register a case and then to proceed with the investigation if he has reason to suspect the commission of an offence which he is empowered under Section 156 of the Code to investigate, subject to the proviso to Section 157 thereof. In case, an officer in charge of a police station refuses to exercise the jurisdiction vested in him and to register a case on the information of a cognizable offence reported and thereby violates the statutory duty cast upon him, the person aggrieved by such refusal can send the substance of the information in writing and by post to the Superintendent of Police concerned who if satisfied that the information forwarded to him discloses a cognizable offence, should either investigate the case himself or direct an investigation to be made by any police officer subordinate to him in the manner provided by sub-section (3) of Section 154 of the Code.

It has to be noted that in Section 154(1) of the Code, the legislature in its collective wisdom has carefully and cautiously used the expression "information" without qualifying the same as in Section 41(1)(a) or (g) of the Code wherein the expressions, "reasonable complaint" and "credible information" are used. Evidently, the non-qualification of the word "information" in Section 154(1) unlike in Section 41(1)(a) and (g) of the Code may be for the reason that the police officer should not refuse to record an information relating to the commission of a cognizable offence and to register a case thereon on the ground that he is not satisfied with the reasonableness or credibility of the information. In other words, 'reasonableness' or 'credibility' of the said information is not a condition precedent for registration of a case. A comparison of the present Section 154 with those of the earlier Codes will indicate that the legislature had purposely thought it fit to employ only the word "information" without qualifying the said word. Section 139 of the Code of Criminal Procedure of 1861 (Act XXV of 1861) passed by the Legislative Council of India read that 'every complaint or information' preferred to an officer incharge of a police station should be reduced into writing which provision was subsequently modified by Section 112 of the Code of 1872 (Act X of 1872) which thereafter read that 'every complaint' preferred to an officer incharge of a police station shall be reduced in writing. The word 'complaint' which occurred in previous two Codes of 1861 and 1872 was deleted and in that place the word 'information' was used in the Codes of 1882 and 1898 which word is now used in Sections 154, 155, 157 and 190(c) of the Code. An overall reading of all the Codes makes it clear that the condition which is sine-qua-non for recording a First Information Report is that there must be an information and that information must disclose a cognizable offence.

It is, therefore, manifestly clear that if any information disclosing a cognizable offence is laid before an officer incharge of a police station satisfying the requirements of Section 154(1) of the Code, the said police officer has no other

option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information.

It is thus well settled as per the principles discussed by the Hon'ble Supreme Court that once the complaint is lodged before an Officer-Incharge of Police Station disclosing the cognizable offences, the Police Officer has no alternate except to enter the substance thereof in the prescribed form i.e. to register the case on the basis of such information and thereafter to submit the matter in its right earnest. In the present case the contents of the communication as supplied to the SHO as per the details discussed hereinabove, did disclose the commission of cognizable offences by the persons mentioned therein and the FIR was bound to be registered against them. Respondents No.3 and 4 are remiss in discharge of their duties by not registering the FIR despite the specific information received from the Principal of petitioner-school of the commission of cognizable offences on 19th Mary, 2007 and 6.6.2007.

Consequently the writ petition is allowed. Respondent No.3 is directed to register the FIR against the persons mentioned in the communication received vide Annexures P-1 to P-5 and thereafter to entrust the investigation to an Officer not below the rank of Deputy Superintendent of Police. There shall be no order as to costs.

Before parting with the judgment, it will be pertinent to state that in compliance to order dated 1st November, 2007, the Chairman of the Managing Committee of the school appeared in person, but he shown his inability to sort out the differences with the staff due to their adamant attitude.

(Rajiv Sharma), Judge

November 12, 2007.
Awasthi